

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES HENRY ROBERTS,  
  
Petitioner,  
  
v.  
  
STATE OF WASHINGTON,  
  
Respondent.

Case No. 3:24-cv-05507-JLR-TLF  
  
REPORT AND  
RECOMMENDATION

Noted for September 10, 2024

Petitioner Charles Henry Roberts has filed a petition for writ of error *coram nobis* under the “All Writs Act,” 28 U.S.C. 1651(a) to challenge two 2015 convictions in Washington state court for felony harassment. Dkt. 1. Petitioner avers that “[b]ecause he is no longer in custody or under restraint for these convictions, even though he continues to suffer collateral consequences, 28 U.S.C. § 2254 is no longer available to him.” *Id.* at 1. Petitioner alleges his felony harassment convictions in state court violate the First Amendment. *Id.*

Petitioner has moved for leave to proceed in *forma pauperis* (IFP) and has also moved to stay and abey his petition while he exhausts his remedies in state court – he indicates he has filed a personal restraint petition raising the same issues he raises in the instant petition. Dkts. 3, 5. Respondent opposes the motion to stay and abey the petition arguing that a stay is inappropriate as the Court lacks jurisdiction over a petition for writ of error *coram nobis*. Dkt. 8.

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DISCUSSION

A writ of coram nobis “is appropriately heard by the district court in which the conviction was obtained.” *Korematsu v. U.S.*, 584 F. Supp. 1406, 1412 (N.D. Cal. 1984) (citing *United States v. Morgan*, 346 U.S. 502, 512 (1954)). “It is well settled that the writ of error *coram nobis* is not available in federal court to attack state criminal judgments... . A writ of error *coram nobis* can only issue to aid the jurisdiction of the court in which the conviction was had.” *Sinclair v. Louisiana*, 679 F.2d 513, 514 (5th Cir. 1982) (per curiam); *Madigan v. Wells*, 224 F.2d 577, 578, n. 2 (9th Cir. 1955) (“the writ [of *coram nobis*] can issue, if at all, only in aid of the jurisdiction of the [ ] court in which the conviction was had.” (citing 28 U.S.C § 1651(a)), *cert. denied*, 351 U.S. 911 (1956); *Hensley v. Municipal Court*, 453 F.2d 1252, n. 2 (9th Cir. 1972) (“We are unable to treat this petition as one seeking *coram nobis* relief because [the petitioner] seeks to challenge a state court proceeding in federal court. *Coram nobis* lies only to challenge errors occurring in the same court.”), *reversed on other grounds*, 411 U.S. 345 (1973); *see Finkelstein v. Spitzer*, 455 F.3d 131, 133-34 (2d Cir. 2006) (collecting cases and affirming denial of petition for *coram nobis* relief on ground of lack of subject matter jurisdiction); *Vasquez v. United States of America*, 16-cv-5341-RBL, Dkts. 8, 10 (denying petition for writ of *coram nobis* seeking to challenge state court conviction due to lack of subject jurisdiction).

Petitioner argues that the Court should grant the motion to stay and abey the petition because the respondent’s argument that the Court lacks jurisdiction cites to non-binding authority and “a writ of coram nobis to vacate a state conviction is not plainly foreclosed in the Ninth Circuit.” Dkt. 9 at 1-3. However, the Ninth Circuit has

1 indicated that a writ of error *coram nobis* “can issue, if at all, only in aid of the jurisdiction  
2 of the [ ] court in which the conviction was had.” See *Madigan*, 224 F.2d at 578, n. 2.  
3 And, even assuming arguendo that this issue has not been sufficiently squarely  
4 addressed by the Ninth Circuit or United States Supreme Court, to qualify as binding  
5 authority, there is, at a minimum, substantial and significant persuasive authority,  
6 including from the Ninth Circuit, supporting the conclusion that the writ of error *coram*  
7 *nobis* is not available in federal court to attack a state court conviction.

8 Accordingly, the Court should DENY and DISMISS the petition for writ of error  
9 *coram nobis* for lack of subject matter jurisdiction. See *Franklin v. State of Or., State*  
10 *Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981) (“A judge ... may dismiss an action  
11 *sua sponte* for lack of jurisdiction.”); Fed. R. Civ. P. 12(h)(3) (“If the court determines at  
12 any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).  
13 The motion to proceed IFP (Dkt. 5) and motion to stay and abey (Dkt. 3) should be  
14 DENIED as moot.

### 15 CONCLUSION

16 Based on the foregoing discussion, the undersigned recommends that the Court  
17 DENY and DISMISS the petition for writ of error *coram nobis* (Dkt. 1) for lack of subject  
18 matter jurisdiction. The motion to proceed IFP (Dkt. 5) and motion to stay and abey  
19 (Dkt. 3) should be DENIED as moot. A proposed order and proposed judgment are  
20 attached.

21 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall  
22 have fourteen (14) days from service of this report to file written objections. See *also*  
23 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for  
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1 purposes of *de novo* review by the district judge, see 28 U.S.C. § 636(b)(1)(C), and can  
2 result in a waiver of those objections for purposes of appeal. See *Thomas v. Arn*, 474  
3 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations  
4 omitted). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is  
5 directed to set the matter for consideration on **September 10, 2024**, as noted in the  
6 caption.

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8 Dated this 26th day of August, 2024.

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12 Theresa L. Fricke  
13 United States Magistrate Judge  
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